

examiner's understanding of the nature of the components from which the invention is fabricated is flawed and that the examiner's objection in paragraph 2 is the result of an unsustainable hypothesis and speculation. The Applicant disagrees that the disclosure would lead a person of ordinary skill in the art to believe that "the gearbox would eventually run out of oil". This is simply untrue. Further, in this paragraph, the examiner has merely stated that he believes that certain additional disclosure would be "important". The examiner has not specified which portion of the USC or the CFR is violated and as such, the Applicant is sincerely unable to ascertain either the technical or the legal basis of the examiner's objection in paragraph 2. If the examiner wishes to pursue this objection it is urged that he provide both more specific technical detail and also the legal basis of his complaint. This is important not only to provide the Applicant with a fair basis for making a reply but also for setting the ground work for potential appeal. It would be improper for the examiner to issue a final rejection if this line of argument is to be continued. It is urged that the examiner reconsider and keep in mind the way the specification would be interpreted by person of ordinary skill in this art.

The examiner is objecting to the drawings because of a minor typographical error in Figure 7. In no sense does this typographical error interfere with the interpretation of the specification. The examiner's rejection is considered hyper-technical and he threatens abandonment of the application as the result of a minor typographical error. In any event, a new drawing figure is attached. The examiner is reminded of his constitutional duty to assist inventors and not to create serious impediments over relatively minor infractions of the CFR.

The examiner objects to the claims on the basis of certain informalities and aspects of section 112. The attached amendments address each of the examiner's observations in paragraphs 4-10 of the examiner's report.

In particular, the Applicant believes that the rejections voiced in paragraphs 8-10 are hyper-technical are not, strictly speaking, objectionable under section 112. Regardless, clarifying amendments are offered in the spirit of bringing the prosecution to a reasonable conclusion.

The claims have been rejected under section 103. The examiner believes that claims 1, 4, 7-9 and 12-14 are unpatentable over Saxe in view of Randolph. The examiner cites Graham v. John Deere Co. as authority for the position that the claimed invention would have been obvious at the time it was made. However, the examiner's rejection is legally flawed for not being in compliance with Graham v. John Deere. The examiner has not determined the proper scope and contents of the prior art, has not correctly ascertained the differences between the prior art and the claims and has not resolved the level of ordinary skill in the art.

The examiner contends that Saxe teaches a frame which supports a mounting plate 40. In fact, the integer 40 in Saxe is a cross block and not a mounting plate of the kind that is recited in claim 1 of the instant application. A cross block is not a legal or mechanical equivalent of a mounting plate. Further, claim 1 of the instant application specifically recites a "marine grade, water cool diesel engine is mounted above the plate and having a vertical axis of rotation". The engine in Saxe is not marine grade, is not a water cool diesel engine, is not above a plate and does not have a vertical axis of rotation. The examiner contends that the mounting plate 40 further comprises a rear facing cut-out portion 39 for accommodating the water pump. This is plainly wrong. There is no mounting plate, the mounting plate does not have a cut out portion and there is no mounting plate for accommodating the water pump.

Further, the reliance on the Randolph reference is clearly misplaced. Randolph teaches a right angle gearbox with a complex clutch assembly that accommodates the use of primary and secondary power sources utilizing a non-reverse clutch mechanism. A device of kind has no bearing on the present invention and would not be considered by a person of ordinary skill in this art as having any benefit for combination with Saxe. There is absolutely no sense of teaching, motivation or suggestion for making the combination of Saxe and Randolph (particularly by locating the gearbox below the plate) apart from the examiner's hindsight reconstruction of the invention. One could say that the Randolph reference teaches the general proposition that right angle gearboxes exist and this much is accepted. However, even given the existence of right angle gearboxes,

there appears to be no utility, benefit or purpose in modifying Saxe (which is a perfectly adequate device) with a 90 degree gearbox of any kind, but for the teachings that have been provided in the Applicant's specification. The examiner is urged not to apply hindsight in the application of section 103.

Thus, a combination of Saxe and Randolph even in the most favourable light, even given the examiner every benefit of the doubt fails to disclose any sense of a marine grade, water cool diesel engine that is mounted above a plate and has a vertical axis of rotation and being connected by a 90 degree gearbox mounted below the plate.

The examiner's suggestion that Saxe and Randolph can be legally combined with either Lucci or Kobenson or Mishima are further examples of the examiner's willingness to engage in speculation, fanciful interpretation of the technical content of the art and hindsight reconstruction in an attempt to reject the Applicant's claims. There is no evidence in the examiner's report or in the record art as to why anyone with any skill whatsoever would attempt to combine the references in the manner suggested by the examiner. The examiner is reminded of his own citation of the Graham v. John Deere case. There are readily ascertainable weaknesses in the application of points 1 and 2 of the examiner's citation of Graham v. Deere Co. as well as the complete absence of any evidence whatsoever on item 3. "resolving the level of ordinary skill in the pertinent art".

The Applicant has taught and claimed and extremely valuable and commercially successful self powered pump which is reliable, powerful and compact. The examiner has rejected the invention on the basis a diverse and unrelated references that do not alone, or in combination teach any aspect of the invention and in particular the specific mechanical limitations recited in claim 1. Not even a highly favourable combination of the cited art discloses the utilization of a marine grade, water cool diesel engine mounted above a plate and having a vertical axis of rotation, a 90 degree gearbox being mounted below the plate that is driven by the diesel motor and an output shaft of the gearbox driving a centrifugal water pump whose axis of rotation is horizontal.

Favourable reconsideration is requested.

Please charge any deficiency in the fees due to our Deposit Account No. 503458 in the name of Molins & Co.

Regards,

A handwritten signature in dark ink, appearing to read "Michael Molins", with a stylized flourish at the end.

Michael Molins

Reg. No. 31785

Customer No. 33372

Encl. Replacement Claims
Replacement Sheet (drawing)

MM/rm